

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

PAUL GRAHAME MORGAN

PLAINTIFF

V.

CIVIL ACTION NO. 2:07cv15-MTP

STATE OF MISSISSIPPI, et al.

DEFENDANTS

OPINION AND ORDER

THIS MATTER is before the court *sua sponte* upon notice of the Suggestion of Death of a Party Herein [64] filed by Defendants on August 10, 2007. Based on the court record and the applicable law, the court finds that Lloyd Beasley should be dismissed from this action.

Plaintiff Paul Grahame Morgan filed his Complaint [1] on January 24, 2007, naming Lloyd Beasley as one of the many defendants. On August 10, 2007, defendants filed a Suggestion of Death of Lloyd Beasley [64] upon the record. According to the Certificate of Death, Lloyd Beasley passed away on July 20, 2007. *See* Ex. A [64-2].

Federal Rule of Civil Procedure 25(a)(1) provides in part:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. . . . Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

More than ninety days have passed since defendants filed the Suggestion of Death of Lloyd Beasley, and the plaintiff has not filed a motion for substitution with the court. Accordingly, defendant Lloyd Beasley should be dismissed from this action. *See Ray v. Koester*, 85 Fed. Appx. 983, 984-85 (5th Cir. 2004); *Jacobs v. Stribling*, No. 1:02cv714JMR, 2007 WL 2156419, at *1-*2 (S.D. Miss. July 24, 2007).

IT IS, THEREFORE, ORDERED that defendant Lloyd Beasley is hereby dismissed from this action with prejudice.

SO ORDERED this the 14th day of November, 2007.

s/ Michael T. Parker

United States Magistrate Judge